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EASTERN

F.O.
371

1947



PALESTINE

File No. 2671

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Reference:-

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371 / 61916

**CLOSED
UNTIL**

1978

61916

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E 2679

27

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Registry Number

E 2679/20/31

FROM

Trayford Smith

No.

6.0

Dated

5.11.1931

Received in Registry

25.11.1931

29

Politic. (Western or Working Wall).
Re: Report of Mr. (E 2447/20/31) of 14 May 1931.
concerning politic. (Western or Working Wall)
order in Council 1931 (S.R. vol. 1931 p. 488).
Enclosed copy of programme 10/1889 of Dec
17, 1926 from the politic. committee - a
propagation issue by brought under (Article)
of the Statute.

Last Paper.

2447/20/31 1931

(Minutes.)

3 Lines

It is a matter for suspicion that

References.

the Palestine courts cannot establish
whether a defendant is or is not a Jew.

(Print.)

61916

Library (to be used with file 31/3)

Mr. Evans

2.15.1931

(How disposed of.)

apt. Trayford Smith

6.0

from Mr. Davies

April 14

Separation

I think the amendments suggested by the High
Commissioner would improve the law. There are really
two objections to Schedule 1 (5) of the Order in Council
as it stands, (a) the inconvenience and difficulty of
having to prove that a person is a Jew or a
Moslem before he can be convicted of an offence and
(b) that it makes only Jews and Moslems respectively
punishable for the objectionable acts whereas those
acts might equally well be committed by mischievous
persons of other religions, and possibly with an equally
disturbing effect.

The suggested amending Order in Council would meet

(Action completed.)

G. E. M. 11/11

(Indexed)

11/11/31

Next Paper.

E 9182

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371 /

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both objections. The suggested regulation, which I agree could be made under Section 2 of the Order in Council, would only meet objection (a) and a regulation of meet (b) also would I think be ultra vires. I agree with Dr. Dafford Smith that the actual form of regulation suggested in his letter is not very suitable but a less milk-provoking formula might be devised.

However I must point out that this appears to be the first case in which difficulty has arisen since the Order in Council came into force in June 1931 and I am rather inclined to agree with Dr. Beley that, though it may be inconvenient to adduce evidence to show that a person is a Jew or a Moslem, the difficulties of proof should not in most cases be insuperable. Therefore, though I agree that the Order in Council in its present form is not entirely satisfactory, I rather doubt whether there is a sufficient case to justify its amendment.

My opinion therefore is that if after further consideration the High Commissioner and the Colonial Office decide that an amendment is necessary they should first consider whether a satisfactory regulation under Section 2 of the Order in Council can be devised and, if not, prepare a draft amending Order in Council.

W.V.J. Evans
 W.V.J. EVANS
 1 April 1947.

Draft submitted

H. Beley 8/4
 W.V.J. 9/4

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75227/46.

Downing Street,
S.W.1.

25th March, 1947.

E 2671

Dear Baxter

Would you please refer to Rendel's letter of the 14th May, 1931 (E.2447/20/31) and related correspondence, concerning the Palestine (Western or Wailing Wall) Order in Council, 1931 (S.R. and O, 1931, No. 488).

I enclose a copy of a savingram from the High Commissioner concerning a prosecution recently brought under paragraph B(5) of Schedule I to the Order in Council. As a result of this case the High Commissioner suggests certain amendments to the terms of the Order in Council. We have consulted our Legal Advisers, who point out that the High Commissioner is given power to make regulations by Section 2 of the Order, with the approval of the Secretary of State, "to give effect to the provisions" contained in Schedule I of the Order. While it might be possible to meet the point raised in the savingram by making a regulation to say that, for the purpose of any proceedings under paragraph (5) of Schedule I, anyone blowing a ram's horn should be presumed to be a Jew unless he proves the contrary, and anyone taking part in the Zikr ceremony should be presumed to be a Moslem unless he proves the contrary, there might be an element of levity about such a provision which would be unsuited to the matter in hand, unless it is

C. A. BAXTER, ESQ. CMG.MC.,

/thought

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Registry
No. E 2671/2671/31

H.B.
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~~Secret~~
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~~Restricted~~
~~Open~~

Draft. *cc.*

Mr. Trafford Smith,
Colonial Office.

From:
Mr. A. Baxter.

Mr Evans ^{WVA} _{10/4}

H.B. 5/4

8/4

11/9/4

OUT FILE

FOREIGN OFFICE, S.W.1.

16th April, 1947.

Dear Trafford Smith,

May I refer you to your letter (75227/46) of the 25th March, concerning the Palestine (Western or ~~Wailing~~ Wall) Order in Council, 1931

It appears that the case reported in the High Commissioner's Saving Telegram No. 1389 is the first in which difficulty has arisen since the Order in Council came into force in June, 1931. It seems to us that, though it may be inconvenient to adduce evidence to show that a person is a Jew or a Moslem, the difficulties of proof should not in most cases be insuperable. Therefore, though ~~we~~ agree that the Order in Council in its present form is not entirely satisfactory, ~~we~~ rather doubt whether there is a sufficient case to justify its amendment.

If, however, you decide after further consideration that an amendment is necessary, you may wish to take the following comments into account.

There are apparently two objections to Schedule I (5) of the Order in Council as it stands: (a) the inconvenience and difficulty of having to prove that a person is a Jew or a Moslem before he can be convicted of an offence; and (b) that the Order makes only Jews and Moslems respectively punishable for the acts defined, whereas those acts might equally well be committed by mischievous persons of other religions, possibly with an equally ~~distracting~~ ^{distracting} effect.

The amending Order in Council suggested

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Reference: -
FO
371 / 61916

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by the High Commissioner would meet both objections.

The alternative suggestion for a regulation "to give effect to the provisions" of the existing Order, would only meet objection (a), and a regulation to meet (b) also ~~would, I think,~~ ^{might} be ultra vires. We agree with you that the actual form of regulation suggested in your letter would not be altogether suitable, but it might be possible to devise an alternative formula *and we would suggest that*

~~Our suggestion, therefore, is that if you decide that the existing order must be amended, you might first consider whether a satisfactory regulation could be drafted, ^{and if} not, ^{then} prepare a draft amending Order in Council *will presumably be necessary.*~~

Yours sincerely

W.M. 10/4
(Sgd.) P. Ganon
for (C.W. Baxter)

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OUT FILE

10

FOREIGN OFFICE, S.W.1.

(F.2671/2671/31).

14th April, 1947.

Confidential.

Dear Trafford Smith,

May I refer you to your letter (75227/46) of the 25th March, concerning the Palestine (Western or Wall) Order in Council, 1931.

It appears that the case reported in the High Commissioner's Saving Telegram No.1889 is the first in which difficulty has arisen since the Order in Council came into force in June, 1931. It seems to us that, though it may be inconvenient to adduce evidence to show that a person is a Jew or a Moslem, the difficulties of proof should not in most cases be insuperable. Therefore, though we agree that the Order in Council in its present form is not entirely satisfactory, we rather doubt whether there is a sufficient case to justify its amendment.

If, however, you decide after further consideration that an amendment is necessary, you may wish to take the following comments into account.

There are apparently two objections to Schedule I (b) of the Order in Council as it stands: (a) the inconvenience and difficulty of having to prove that a person is a Jew or a Moslem before he can be convicted of an offence; and (b) that the order makes only Jews and Moslems respectively punishable for the acts defined whereas those acts might equally well be committed by mischievous persons of other religions, possibly with an equally disturbing effect.

/The

Trafford-Smith, Esq.,
Colonial Office.

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The Church House,
Great Smith Street,
S.W.1.

75227/47

29 September, 1947

Dear Garran,

Please refer to your letter
(E 2671/2671/31) of 14th April
concerning the Palestine (Western or
Wailing Wall) Order in Council 1931.

We have come to the conclusion
that an amending Order in Council
is likely to be the most expeditious
way of overcoming the difficulty
encountered in the wording of
Paragraph 5 of Schedule I, and I
enclose a copy of the suggested
draft amendment and of the Saving
Telegram which we have sent to the
High Commissioner on this matter.

We would be grateful for any
observations you may have on the
draft.

*Your sincerely,
W.A.C. Mathieson*

(W.A.C. Mathieson).

I.P. GARRAN, ESQ.

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75227/47

14

Saving.

From the Secretary of State for the Colonies.

To the Officer Administering the Government of PALESTINE.

Date 30 September, 1947.

No. 221 Saving. SECRET

Saving Telegram No. 1389.

Palestine (Western or Wailing Wall) Order in
Council, 1931.

I agree that it is desirable in future to ensure successful prosecution for breaches of this Order-in-Council and to avoid recurrence of the difficulty of establishing religious persuasion which was encountered under the present wording of Paragraph 5 of Schedule I in the case of Moshe Yusef Karaewany.

2. An amending Order in Council appears to be the most satisfactory method of rectifying the position and a draft amendment to Paragraph 5 of Schedule I prepared by my legal advisers is enclosed for your consideration.

/Though

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16

DRAFT ORDER IN COUNCIL

At the Court at
the day of 1947.
Present

WHEREAS it is desirable to amend the provisions of the Palestine (Western or Wailing Wall) Order in Council, 1931 (hereinafter called "the principal Order") in manner hereinafter appearing:

NOW, THEREFORE, His Majesty, by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the Palestine (Western or Wailing Wall) Order in Council, 1947, and shall be read as one with the principal Order.
2. In place of the provisions contained in sub-paragraph (5) of paragraph B of Schedule 1 to the principal Order the following provisions shall have effect, namely -

No person shall blow the ram's horn (Shofar) near the Western or Wailing Wall nor cause any other disturbance to the Moslems that is avoidable; and no person shall carry out the Zikr ceremony close to the Pavement in front of the Wall during the progress of the Jewish devotions, nor cause annoyance to the Jews in any other way.
3. This Order shall come into operation on a day to be fixed by the High Commissioner by Proclamation in the Gazette.

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371 / 61910

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Registry
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17 Oct.
16pm.

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J&C.

40 17² Oct.

Draft. *ve.*
Mr. Mathison C.O.

Dear Mathison,

from
Mr. Butler

The draft amending ^{Order In-}
^{to GARRAN}
Council enclosed in your letter
no. 75227/47 of 30th September about
the waiting. It all appears to
us to meet the case satisfactorily
and we have no comments to
make on its wording.

J. B. Oct. 10

(Sgd.) John Birch.

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(32654) W.L.14696/147 75,000 6/47 A.& E.V. Ltd Gp.685

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18
End

FOREIGN OFFICE . S.W.1

17th October, 1947.

(P 9182/2671/31)

Dear Mathieson,

The draft amending Order-In-Council enclosed in your letter to Garran No. 75227/47 of 30th September about the Wailing Wall appears to us to meet the case satisfactorily and we have no comments to make on its wording.

Yours sincerely

(Sgd.) John Beith

(J. G. S. Beith)

W. A. C. Mathieson, Esq., M.B.E.,
Colonial Office.

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